

**Department of  
Conservation &  
Development**

**Community Development Division**

County Administration Building  
651 Pine Street  
North Wing, Fourth Floor  
Martinez, CA 94553-1229

Phone: 925-335-1240

**Contra  
Costa  
County**



**Catherine Kutsuris**  
Director

**August 24, 2010**

**Delta Stewardship Council  
650 Capitol Mall, Fifth Floor  
Sacramento, CA 95814**

**Re: Comments on the Final Draft of the Interim Delta Plan**

Dear Chairman Isenberg and Council Members:

This letter provides comments from the Contra Costa County Conservation and Development Department on the Final Draft of the Interim Delta Plan (Interim Plan) that is dated August 16, 2010.

The department is pleased with the content of the Council policies and procedures included in Appendix A. The procedures for appeals and reviews are responsive to the comments we provided the Council's attorney, at the invitation of the Chair. A de novo decision on an appeal of Fish & Game's determination that the Bay Delta Conservation Plan meets the additional requirements of the SBX7-1(beyond the California Environmental Quality Act and the Natural Communities Conservation Planning Act) will ensure the Council will use its independent judgment and will not be bound by the administrative record used by Fish & Game.

Unfortunately, the process for commenting on procedures for appeals and reviews is the only part of the public process used to prepare the Interim Plan that appears to be working. Many agencies have provided thoughtful and substantive comments on the earlier drafts of the Interim Plan or at various Council work groups. Most of these comments, however, are not acknowledged in either the Interim Plan or in the staff report recommending its adoption.

The separate Comment Tracking Matrix (Agenda Item 16, Attachment 3) is a welcomed addition to the Council's deliberations, but it falls short in a number of areas. The attachment notes that *"these matrices do not include discussions of how the comments were specifically used. It is anticipated that comments submitted on the Interim Plan preparation will also be reviewed in development of the Delta Plan."* Should stakeholders not bother to repeat these comments? Should stakeholders guess which comments not incorporated into the Interim Plan are believed by the Council to be inappropriate in any case?

Comment Matrix 4 (Comments Related to Early Actions), fails to include the seven early actions from Contra Costa County's August 3<sup>rd</sup> comment letter, which were organized according to the policy objectives of the new Delta Reform Act as requested in the Chair's letter of July 14, 2010. The County's comment letter also referenced our July 30<sup>th</sup> correspondence to the Governance and Implementation Work Group which included 10 early actions the Council should consider to promote implementation of the SBX7-1. These early actions were also omitted from Matrix 4.

The major flaw in the Council's public process for the Interim Plan is its limited transparency and openness. The issue of transparency and openness was covered well by the Interim Plan's description of the Council's decision process for use of best available science. For guidance, the Interim Plan draws from the National Research Council, Committee on Defining the Best Scientific Information Available for Fisheries Management, 2004, *Improving the use of "Best Scientific Information Available" Standard in Fisheries Management*. This document is also a great reference for those interested in the decision processes of public bodies in general. Page 56 of this reference states:

***"Transparency and Openness—Congress has enacted laws intended to give the public full and open access to the development of federal policies, including advisory meetings, background documents, and other sources of information. Accordingly, the public should have information about each phase of the process from data collection to data analysis to decision making.***

- *Decision makers should provide a clear rationale for the choice of the information that they use or exclude when making management decisions.*
- *The processes of collecting data and selecting research for use in support of management decision making should be open, broad based, and carefully documented.*
- *All scientific findings and the analysis underlying management decisions should be readily accessible to the public.*
- *The limitations of research used in support of decision making should be identified and explained fully."*

These principles were not followed by the Council in its review of many of the comments on the Interim Plan. An example of the lack of transparency and openness can be found in how the Interim Plan addresses levees.

The Interim Plan does not adequately inform the Council's responsibilities and recommendations for levees. To begin with, the Interim Plan appropriately acknowledges:

- Water Code §85306 which states *"The council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are part of the State Plan of Flood Control and non-project levees."*; and
- The Council's responsibility for review and approval of Proposition IE expenditures for selected projects not already funded or completed under this program. This includes approximately \$135 million with preference for projects that protect and improve Delta water quality and drinking water supplies.

In view of these levee-related facts, the following written requests were made to ensure the Council gives sufficient priority to early actions on levees:

- For Section 1, text was suggested to enhance discussion in the background section of the Interim Plan on the role Delta channels/levees serve as vital infrastructure to get surplus water from the North Delta to the export pumps in the South Delta;

- For Section 4, a detailed early action was provided for the Council to request that the Department of Water Resources (DWR) identify near-term levee improvements essential to the operation of the SWP and the CVP and that can be funded by Proposition 1E revenue. A detailed early action was also provided for the Council to develop recommendations to improve the process by which DWR administers the Delta Levees Subventions and Special Projects Programs, which are the primary source of state aid available for non-project levees in the Delta; and
- Section 5 provides a map and table of current levee system integrity to be used as an analytical tool for organizing information that will be used as the basis for future Council actions concerning levees. Text was provided to highlight the need for a levee class suitable for levees that support through-Delta conveyance.

The only acknowledgment of these comments was the addition of a sentence in Section 5 that states *"As noted in one comment received on the second draft Interim Plan, there is no levee classification specific to those levees playing a role in water supply"*. The Final Draft included other revisions on page 41 that appear to narrow the Council's focus only to levees that protect human uses of lands behind levees, and not to levees playing a role in water supply.

What are commentators on the Interim Plan to conclude from the Final Draft concerning these levee issues?

- The Interim Plan does not need to specifically acknowledge the role Delta channels/levees serve as vital infrastructure to get surplus water from the North Delta to exports pumps in the South Delta?
- No early action is necessary to require DWR to identify near term levee improvements essential for water supplies that can be funded by currently available Proposition 1E revenue?
- The Proposition 1E resources being directed to the Delta Levee Subventions and Special Projects Programs are being used in a reasonably timely, efficient, effective and strategic way?
- There are existing levee classifications suitable for levees that support through-Delta conveyance so there is no need to develop a separate levee class for this function?

Commentators can only speculate on the answers to these questions. Up to this point, no public dialogue among Council members has occurred on the adequacy of the Interim Plan for informing Council responsibilities and recommendations for levees. There has been no process for considering written comments and no process for communicating this to the public. A draft Delta Plan is scheduled to be released in November, and there is no process for considering if unaddressed comments made on the Interim Plan would be covered in the Delta Plan.

More transparency and openness is also needed in the Interim Plan's treatment of the BDCP. Page 15 contains the simple statement that *"...the Council has defined its role in relationship to the BDCP steering committee..."* Requests to describe in the Interim Plan the role the Council has defined for itself are unanswered. The Interim Plan does not mention the position of the Council as explained in its recent scoping comments on the BDCP's Environmental Impact Report/Statement, nor does the Interim Plan explain how the Council intends to reach



conclusions to the issues raised in those scoping comments. Silence on these points is of particular concern since the BDCP is scheduled for release in November.

Another significant deficiency in the Interim Plan is the process proposed for considering early actions. This process needs clarification and streamlining. Appendix B uses one seven-page questionnaire for considering both early action requests and plan/project/covered action review requests. The level of detail in the questionnaire is not appropriate for early action requests, particularly if the request is being made by a party that will not be responsible for implementing the early action. For instance, early action requests have already been submitted for the Council to undertake certain administrative actions, such as preparing a work plan or hiring a permanent executive director. Table 4-1 contains early actions that are not specified in statute, but the Interim Plan does not describe the criteria that were used to add these early actions for review by the Council. The Interim Plan suggests that other possible early actions should be screened against the legislative history criteria of urgency – which is not altogether very clear. Two suggestions for streamlining the process for considering possible early actions are:

1. Include specific screening criteria in the Interim Plan for possible early actions and direct DSC staff to screen the early actions already received through public comment; and
2. Prepare a separate, streamlined questionnaire for possible early actions for use by parties whose previous recommendations did not meet the screening criteria and for early actions that may be offered after adoption of the Interim Plan.

Contra Costa County hopes these comments are considered constructive and we are open to suggestions on how communications between the Council and interested parties can be improved.

Sincerely,



Steven L. Goetz, Deputy Director  
Conservation and Transportation Planning Programs

cc: Contra Costa County Legislative Delegation  
Contra Costa County Board of Supervisors  
Delta Counties Coalition  
Contra Costa Council